

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF PENNSYLVANIA

IN RE: :
: Case No. 23-10764
: 23-10763
TECHNOVATIVE MEDIA, INC. CH: 11 :
/ STREAM TV NETWORKS INC : Philadelphia, Pennsylvania
: March 16, 2023
. : 2:01 p.m.

BEFORE THE HONORABLE MAGDELINE D. COLEMAN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 MARCH 16, 2023

2 THE COURT: Good afternoon.

3 MR. ZAHRALDDIN: Good afternoon, Your Honor.

4 THE COURT: Okay. This is an emergency motion in the
5 case of Technovative Media Inc.

6 Counsel, before we begin, I would ask that you keep
7 your telephone on mute until you speak. I would also ask that
8 you please state your name for the record before you speak.
9 Okay. And as I said, this is a Debtors, it's a Debtors. So
10 I'm not sure if this is -- it only has one caption that this is
11 meant to be in the case of what I think is a related case.
12 Request for an emergency hearing to enforce the stay.

13 All right. Who's here for the Debtor?

14 MR. ZAHRALDDIN: Your Honor, good afternoon. Thank
15 you for making time to hear us. This is Rafael Zahralddin,
16 counsel -- proposed counsel for the Debtor from the law firm of
17 Lewis Brisbois. I also have on the line Vincent Alexander,
18 who -- and we're also representing the Debtor. And just to
19 quickly answer your question as to which case to which this
20 applies, we're speaking to an administration but haven't had a
21 time to obviously have that heard. But the only debtor in
22 question under the underlying receivership order and the
23 hearing pending for sanctions is Technovative. It does not
24 involve Stream TV Networks directly.

25 THE COURT: Okay. All right. Who else is here on

1 this matter?

2 MR. CAPONI: Good afternoon, Your Honor. My name is
3 Steven Caponi from the law firm of K&L Gates. And I represent
4 Hawk Investment Holdings Ltd, as well as speaking for behalf of
5 SeeCubic, Inc. SeeCubic and Hawk are the secured creditors of
6 the Debtors. I believe I also have with me on the line
7 listening for various jurisdictions, Aaron Rothman and Margaret
8 Westbrook, also from K&L Gates.

9 THE COURT: Okay. So we have -- who are the -- Aaron
10 Watson (sic) and who else, Counsel?

11 MR. CAPONI: Margaret Westbrook.

12 THE COURT: And you all represent Hawk Investment
13 who?

14 MR. CAPONI: Holdings Ltd and SeeCubic, Inc.

15 THE COURT: Okay. Anyone else here?

16 MS. FAY: Good afternoon, Your Honor.

17 UNIDENTIFIED SPEAKER: Yes.

18 MS. FAY: You have Erin Fay from Wilson Sonsini
19 Goodrich & Rosati. I represent Ian Liston, who is the receiver
20 appointed in the Delaware Chancery Court matter. Mr. Liston, I
21 believe, is also on the line this afternoon.

22 THE COURT: Could you say the name again? You said
23 Ian Liston?

24 MS. FAY: My -- my name is Erin Fay. And the
25 receiver's name is Ian Liston.

1 THE COURT: Okay. And you said the receiver is
2 also -- the Delaware receiver is also on the line?

3 MS. FAY: Yes, Mr. Liston is on the line.

4 THE COURT: Okay. Anyone else?

5 MR. MICHAELS: Yes. This is Chris Michaels
6 (phonetic) representing Rembrandt 3D Corp. We have -- we would
7 effectively be a creditor in this action and own the underlying
8 technology.

9 THE COURT: Okay. Anyone else?

10 MR. DUPRE: Your Honor, this is Andrew Dupre of
11 McCarter & English. I was the Debtor's counsel in the
12 underlying Chancery action that's the subject of this motion.

13 THE COURT: I'm sorry. All I heard was Andrew.
14 What's your last name, Counsel?

15 MR. DUPRE: Dupre D-U-P-R-E, Your Honor. I
16 represented Stream and Technovative in the Chancery action.

17 THE COURT: Okay. Anyone else?

18 MR. MAZZA: Yes, Your Honor. This is Jim Mazza from
19 Skadden Arps. I'm with -- as you know, Skadden Arps, we are
20 coordinating with Mr. Caponi from K&L Gates and have the mutual
21 interest with SeeCubic, as he mentioned previously.

22 THE COURT: So you represent the -- what do you mean?

23 MR. MAZZA: SeeCubic, Your Honor.

24 THE COURT: Uh-huh. You represent SeeCubic?

25 MR. MAZZA: Correct.

1 THE COURT: Okay. So you're co-counsel with Mr.
2 Capara (sic)? Did I spell that right?

3 MR. CAPONI: Caponi, Your Honor. Sorry. It's C-A-P-
4 O-N-I.

5 THE COURT: Mr. Watson (sic) and Ms. Westbrook, you
6 are co-counsel with Mr. Mazza with respect to SeeCubic?

7 MR. MAZZA: That's right.

8 THE COURT: Okay. All right. Anybody else?

9 MS. BRUMME: Your Honor, this is Marley Ann Brumme.
10 I'm also from Skadden Arps. I'm a colleague of Mr. Mazza.

11 THE COURT: Okay. Anybody else?

12 MR. SCHANNE: Good afternoon, Your Honor. This is
13 John Schanne on behalf of the United States Trustee.

14 THE COURT: Okay. Anyone else appearing today?
15 Okay, I don't hear anyone else. All right. Counsel --

16 MR. CALLAHAN: Your Honor, yeah. Kevin --

17 THE COURT: Yes?

18 MR. CALLAHAN: Kevin Callahan for the United States
19 Trustee.

20 THE COURT: Anyone else? All right.

21 Proposed counsel for the Debtor, tell me why is it
22 that I should -- what is it that you're looking for this court
23 to do and why I should grant it?

24 MR. ZAHRALDDIN: So Your Honor, our position is
25 fairly simple. We filed the case yesterday. The automatic

1 stay arises by operation of law. That should stay any
2 proceeding, any proceeding, that implicates the Debtor. And
3 the action below implicates the Debtor directly. The language
4 in the notation on the order for the 3:00 hearing indicated the
5 receiver has informed Media Stream TV Networks and Technovative
6 Media, Inc. filed for bankruptcy just before midnight last
7 night in the Eastern District of Pennsylvania.

8 During today's pre-trial conference, Mr. Dupre will
9 address the extent to which he or any attorney from his firm
10 was involved in the filing and how Technovative could file the
11 petition in light of the receiver's authority and the status
12 quo order. Counsel for both sides will address the
13 implications for the case. Our concern is that the status quo
14 order had an absolute restriction on even the receiver filing
15 for Chapter 11, which is a void order under federal preemption
16 and United States bankruptcy laws and, you know, I think
17 decades of jurisprudence. And certainly, you know, we would be
18 happy to brief that issue if we had time, Your Honor. But
19 because there is a pending sanctions --

20 THE COURT: Well, what is this -- I mean, I --
21 counsel, I did read that docket entry and I didn't hear the
22 word -- I didn't see the word sanction, so I wasn't quite sure
23 whether --

24 Instead of -- give me just --

25 Status hearing, from what I could gather. Maybe I

1 misread it, but it says that counsel will address the
2 implications for the case. Does that mean -- I don't -- I
3 mean, how does that translate to a sanctions hearing?

4 MR. ZAHRALDDIN: Well, Your Honor, I don't know if
5 Mr. Dupre's heard that et cetera, but that is our concern. Our
6 concern is that there's going to be a sanction given to the
7 parties who filed or authorized the case, and that would
8 violate the stay. I also believe the proceeding violates the
9 stay because it is an action regarding Technovative, which has
10 filed bankruptcy. To the extent that there's any issue, it
11 needs to be handled in front of Your Honor and not a state
12 court.

13 THE COURT: Well, Counsel, you didn't attach -- other
14 than this order, I mean, some kind of background as to what
15 this involves or why it's -- I understand they filed
16 bankruptcy. I understand the implications from the stay. I
17 know what it says. I don't know ultimately to get anybody
18 where they're trying to go. Because to the extent the case is
19 filed, there's some implications about the stay. And whether
20 this is an authorized filing or unauthorized filing, that's to
21 be determined.

22 MR. ZAHRALDDIN: Uh-huh.

23 THE COURT: It doesn't mean any of that. It just
24 means whatever the stay means. But I would -- you know,
25 some -- at least some background would be helpful for this

1 Court.

2 MR. ZAHRALDDIN: I know, Your Honor, and I apologize
3 for that. It came up on us pretty quickly. And when we -- if
4 we were given the breathing spell that the state would give us,
5 we are going to put plenty of paper in front of you to discuss
6 the issues here. And including -- you know, we have folks on
7 the line who can give you a variety of different -- you know,
8 different color on the case; not just the two secured
9 creditors.

10 But also, there's an underlying Delaware Supreme
11 Court opinion, which instructed over a year ago for the assets
12 of this company to be fully returned. And we're still in the
13 process of that, which has frustrated customers and suppliers
14 and everyone else. And that's one of the reason we believe
15 this should be up and we filed the case in a bankruptcy court.
16 But we also have implications with federal Trade Secret law,
17 which is another federal issue. We have the interested party
18 for that on the line. They also have tried to intervene below
19 and have not been able to get very far.

20 And we have a receiver pendente lite who was put into
21 place, in some part, to also preserve the assets and we're
22 concerned about what's happening with the assets overseas. But
23 for all those reasons and because the order itself should be
24 void in the underlying -- at least the portion of it that
25 restricts someone from filing federal bankruptcy, we were very

1 concerned that there was a hearing set this quickly in which
2 Mr. Dupre was going to be asked how his firm was involved.
3 That only -- to me, that implicates a sanctions or some sort of
4 reprimand because that -- you know, the vice chancellor has
5 jurisdiction over Mr. Dupre.

6 And then also, there'd be some sort of sanction or
7 other adverse activity by the court against the officers and
8 directors who have the right to file for bankruptcy. If -- and
9 they have a remedy if -- as you said, if there's an authority
10 to file issue or something else, they can come up in front of
11 you, present their case. But it should not be adjudicated
12 further in this state court matter, and that was our concern.

13 MR. CAPONI: Your Honor.

14 THE COURT: Hold on.

15 Ultimately, Counsel, I don't want anybody to think
16 that whatever my ruling is, is that whether this filing was
17 authorized or unauthorized. We're not there.

18 MR. ZAHRALDDIN: Yes, ma'am.

19 THE COURT: So I want to make it clear that the only
20 thing I'm going to look at is what is the implication, when the
21 case was filed and what does that mean for the automatic stay?
22 So I want everybody to be clear; that is all I'm going to look
23 at.

24 MR. ZAHRALDDIN: That's all we're asking, Your Honor.

25 THE COURT: That's all the stay needs. And anything

1 else that, you know, that's down the road somewhere. That's
2 for a later date. Definitely not for today.

3 All right. So someone else was starting to speak.
4 Who was that?

5 MR. CAPONI: Yes, Your Honor. Sorry. That was Steve
6 Caponi. I wanted to briefly just give Your Honor the relevant
7 background that you had asked for. The background is as
8 follows.

9 Stream borrowed tens of millions of dollars, owes
10 hundreds of millions of dollars to its secured creditors. The
11 Delaware Supreme Court has already adjudicated that it was
12 valid and there was a default. And there exists and remains a
13 default under the debt. The pending case in the Court of
14 Chancery was the secured creditors exercising their rights to
15 assume control of the board of Technovative. It's called 225
16 action. That case was set for trial next week. A jury -- a
17 bench trial only. Oral argument is being submitted on the
18 papers.

19 Today, counsel incorrectly indicates that there was
20 some hearing scheduled too quickly. It was the pre-assigned
21 pre-trial conference date this afternoon. When the 225 action
22 was filed, Mr. Liston, the receiver, was appointed by the court
23 pursuant to a receivership order and there was separately a
24 status quo order. The status quo order has the language
25 referencing you're not allowed to file a bankruptcy. There was

1 separately a receivership order which appointed Mr. Liston to
2 control the company.

3 The hearing today -- I shouldn't say hearing --
4 status conference before Vice Chancellor Laster, as I read the
5 docket as lead trial counsel, is to understand the implications
6 of the stay on the trial. Vice Chancellor Laster is very
7 experienced, been on the bench many years. This is not his
8 first rodeo at this nor mine. We all understand the automatic
9 stay and that the trial will not be going forward, absent
10 relief from Your Honor.

11 But Vice Chancellor Laster wanted to understand Mr.
12 Dupre, Delaware litigation counsel's role and if any in how a
13 bankruptcy could have been authorized without the consent or
14 approval of the receiver, who is the sole authority
15 pre-bankruptcy to speak for the company. The last bit of
16 background I would note for Your Honor is this is the third
17 bankruptcy filed by this debtor to avoid the secured creditors.
18 The first two were filed in Delaware and were dismissed as bad
19 faith filings. We think this is also -- I know this is a --

20 THE COURT: Wait a minute, Counsel. Counsel, hold
21 on.

22 MR. CAPONI: -- for another day.

23 THE COURT: Counsel, hold on. So two -- the Debtors,
24 debtor or debtors, filed two cases and both were dismissed as
25 an -- dismissed as bad faith?

1 MR. CAPONI: Yes, Your Honor. And I believe the same
2 counsel --

3 MR. ZAHRALDDIN: No, Your Honor. That's incorrect.

4 MR. CAPONI: Excuse me. I was speaking, sir.
5 Rafael, if you don't mind?

6 THE COURT: Okay. I will figure that out. You
7 believe that they were both voluntary filings that were
8 dismissed for bad faith?

9 MR. CAPONI: It was this -- I believe, Your Honor, it
10 was Stream. And the first one was bad faith and the second one
11 was also dismissed because it was an involuntary in collusion
12 with Rembrandt, who also appears as the -- in this matter, Your
13 Honor. And they were both filed in Delaware and both were
14 dismissed.

15 THE COURT: Okay. So one was --

16 MR. ZAHRALDDIN: Your Honor, can I speak to that?

17 THE COURT: Wait a minute. No, hold on. Let me
18 clarify. Just hold on.

19 MR. ZAHRALDDIN: Okay.

20 THE COURT: So one case was a voluntary petition that
21 was dismissed as a bad faith filing? And the second was an
22 involuntary that was dismissed?

23 MR. CAPONI: Correct, Your Honor.

24 THE COURT: Was that also dismissed? Was that
25 also --

1 MR. CAPONI: Yeah.

2 THE COURT: -- dismissed as a bad faith filing, the
3 involuntary?

4 MR. CAPONI: Yes, Your Honor. And I would, on this
5 point, defer to my colleagues at Skadden, who I believe were
6 the ones instrumental to having those dismissed. I came in
7 after the fact, but that is my understanding, yes.

8 THE COURT: Okay. So they were both dismissed as bad
9 faith, one was voluntary. So the Debtor didn't file -- so the
10 Debtor filed one and then creditors presumably, however it
11 happened filed the involuntary, correct?

12 MR. CAPONI: That is my understanding.

13 UNIDENTIFIED SPEAKER: Correct, Your Honor.

14 THE COURT: Okay. All right.

15 Counsel, don't interrupt. I forgot to give my
16 standard instructions, which were don't speak -- keep your
17 phone on mute until you speak, don't interrupt each other and
18 definitely do not interrupt the Court. I'm the only one who
19 gets to interrupt. And so I didn't give that instruction, but
20 I would, counsel, ask that you not interrupt. I will give
21 everyone an opportunity to get their say, okay?

22 Mr. Caponi, you're telling me that today was a status
23 hearing on the litigation?

24 MR. CAPONI: Yes, Your Honor. The case --

25 THE COURT: Counsel -- so Counsel, do you believe

1 that the automatic stay applies to this status hearing?

2 MR. CAPONI: No, Your Honor. I do --

3 THE COURT: And if not, why not?

4 MR. CAPONI: I do not believe that the automatic
5 stay -- because it is a status conference not to address the --

6 First, let me -- I should say I'm reading the same
7 docket Your Honor reads, which is, as I read the docket entry
8 by Vice Chancellor Laster, he is not holding a pre-trial
9 conference. He wants to hear individually from Mr. Dupre as to
10 Mr. Dupre's involvement, if any, with the violation of his
11 order which placed the receiver in charge.

12 THE COURT: Well, but that's the point. He's having
13 a hearing in a matter that -- I am asking you don't believe the
14 automatic stay operates as a stay of any actions involving
15 the -- of Debtor? Putting aside the issue of what it is that
16 he wants to do, ultimately, this is my concern. Is he going to
17 make some determination that it was unauthorized? That it
18 shouldn't have been filed?

19 Isn't that something that -- you know, to the extent
20 that there's an issue of whether this is a proper filing, that
21 would be properly be for me. That doesn't mean that I would
22 ignore the chancellor's order or -- I mean, because any time
23 someone challenges the authority to file, you would give me
24 what evidence that you would have and I would make a ruling.
25 I'm not going to overrule the chancellor or anything to that

1 effect.

2 But what would happen is everybody would come and
3 say, well, this is not a proper filing because -- you know, for
4 in a simple case where say a corporation, well, or a
5 partnership or the parties who filed were not -- did not have
6 the authority. So that ultimately will get decided. But
7 putting that, you know, for down the road, the issue for me is
8 does the stay stay everything? And tell me if it doesn't stay
9 this, why is it an exception to the automatic stay that stays
10 everything?

11 MR. CAPONI: Yes, Your Honor. So to be clear, yes,
12 the automatic stay applies. We have -- we are not seeking any,
13 and will not seek at 3:00, any relief involving the Debtors.
14 We're not -- we don't have any motions pending, any requests
15 for relief pending. We are there to listen to Vice Chancellor
16 Laster. So we absolutely respect the automatic stay. We
17 respect the court, your court and Your Honor. And we agree
18 that any issue as to whether or not this was an appropriate
19 filing or authorized filing or fraudulent filing. That is all
20 going to ultimately be resolved by Your Honor. And that is if
21 Vice Chancellor Laster would even dream of stepping on that
22 area. I would encourage him not to.

23 THE COURT: That is --

24 MR. CAPONI: I don't imagine that he would.

25 THE COURT: I'm not suggesting that he would. What I

1 am suggesting is that does the automatic stay stop even this?
2 Nothing goes forward?

3 MR. CAPONI: No. Yes, Your Honor.

4 THE COURT: Why not?

5 MR. CAPONI: I do not believe the automatic stay
6 stays this because this, as I read Vice Chancellor Laster's
7 docket entry in my almost 30 years' experience in the Delaware
8 bar here, he wants to -- this is a matter between the vice
9 chancellor and a member of the Delaware bar, Mr. Dupre. Where
10 the court wants to understand Mr. Dupre's role as counsel of
11 the bar of Delaware standing before Vice Chancellor Laster, to
12 understand if Mr. Dupre was involved with violating the order
13 as pertains to the appointment of the receiver or if Mr. Dupre
14 knew anything about that. I'm not even assuming that the Court
15 is accusing Mr. Dupre. This is simply --

16 THE COURT: That's the point.

17 MR. CAPONI: -- what I would view as a housekeeping
18 matter with the Court and a member of the bar.

19 THE COURT: Counsel, I think it's more than a
20 housekeeping matter. He would have to determine whether Mr.
21 Dupre violated an order. And so I think that's a little
22 putting the cart before the horse. If ultimately the Debtor
23 was barred from filing this and that's what I ultimately
24 determine, that's something the court would have jurisdiction
25 over to say, as a member of the bar, I told you not to do this

1 and why did you? So I think it's a little -- I think it's a
2 little premature to be asking why you did something without his
3 being -- he would have to determine that the filing -- he wants
4 to understand why it was done. And to me, it would implicate
5 his order and some determination as to why you did what you
6 did. That's -- so a broader issue for me is that when the stay
7 happens, can a court do anything and everything stay? Now, I
8 get there are some things that are stayed. And I haven't heard
9 that this is in one of the exceptions to the state. I don't
10 know. And I'm trying to -- you're saying that it's not safe
11 because this is just -- is it Chancellor or Vice Chancellor?

12 MR. CAPONI: Vice Chancellor, Your Honor.

13 THE COURT: Vice Chancellor. Laster or Laster?

14 MR. CAPONI: Laster.

15 THE COURT: Laster. Is it Vice Chancellor Laster, is
16 he -- I get what you're saying. Does the Court bring in a
17 member of the bar and say, well, why did you do this when I
18 told you not to or what authority you had? But that also would
19 go to whether he had the authority or not. I'm not saying that
20 he did. I'm not saying that he didn't do anything in violation
21 of the court order. I just -- from my concern is, we're
22 starting to have -- if there's something other than some record
23 as to why you did what you did, that that somehow is something
24 I'm openly have to look at. And am I going to be bound by Vice
25 Chancellor Laster that this was unauthorized because the

1 parties have already litigated it and it has already been
2 resolved?

3 I mean, this is just a fact finding. I'm not quite
4 sure. The fact that there might not be sanctions, the fact
5 that there may be no consequences, the ultimate question for me
6 is everything is stayed. You can't do anything in this State
7 Court, not even a status conference. Nothing until it
8 ultimately resolved whether this bankruptcy is going to be
9 allowed to go forward. Because I am pretty sure what I am
10 hearing is that the position is it's unauthorized. And
11 ultimately, it may not -- whether it is or isn't, I don't know
12 the answer to that. I haven't seen the orders. And even if I
13 saw them, I wouldn't do anything with them because I need an
14 evidentiary hearing.

15 So my concern I when the automatic stay applies, is
16 there an exception, and you need to tell me what the exception
17 is. And you're saying it supports wanting to know whether a
18 member of the bar violated his order. And that's putting the
19 -- I mean, ultimately, he may be able to do that. I don't
20 know. The question is can you do it today or does he have to
21 wait until there's an issue whether this is a properly and
22 authorized filing.

23 MR. CAPONI: Yes, Your Honor.

24 THE COURT: Just assume. Assume that I found that --
25 and I want everybody to focus on the word assume. Assume that

1 I find that it was. What then would the Chancellor be
2 authorized to do with respect to Mr. Dupre? Because I find
3 that it was.

4 MR. CAPONI: Your Honor --

5 THE COURT: Would he not be bound by that? I mean,
6 I'm just assuming. I could also assume that it's not and then
7 he would be able to do what exactly it is he's doing today. So
8 that's my concern. Are we -- is everything stayed or is this
9 something that is an exception to the stay?

10 MR. CAPONI: Your Honor, again, I will give you my
11 answer and then I obviously would invite any of the real
12 bankruptcy lawyers from this call to jump in. But the
13 automatic stay applies to the Debtors. The status conference
14 today is nothing but a status conference to gather information
15 on behalf Vice Chancellor Laster. He's not asking to hear from
16 either one of the Debtors, so I don't believe the stay applies.
17 No one is moving to take any action against the assets of the
18 Debtor, and no one is making a determination as to whether or
19 not this was an authorized filing. Your Honor will make that
20 determination.

21 I think Vice Chancellor Laster is always free to
22 interpret his own order and the automatic stay does not
23 preclude a state court from interpreting the order or
24 understanding the implications of his order or whether it's
25 even being followed. I think Vice Chancellor Laster were to

1 take action, maybe an action that would affirmatively impact
2 the Debtor, that would impact the automatic stay. But him
3 gathering information would not.

4 And I think lastly, Your Honor, there are two
5 separate orders at play here, which is important to understand.
6 One, there is an order appointing a receiver. Prior to the
7 filing of this bankruptcy for many months, Mr. Liston has been
8 the receiver solely in charge of Technovative and its operating
9 subsidiaries. The ordinary course is that Mr. Liston operates
10 this entity prebankruptcy. He was appointed by Vice Chancellor
11 Laster to run that.

12 Presumably, as ordinary course, Mr. Liston remains in
13 place running Technovative. And again, ordinary course
14 prefiling was answerable to the Vice Chancellor. So I would
15 say the automatic does not -- stay does not implicate the Vice
16 Chancellor understanding to what extent the receiver he put in
17 place is still operating the assets in the ordinary course as
18 they existed prebankruptcy.

19 THE COURT: Well, counsel, I don't think that's how
20 that happens. Anyone can file when there's a receiver in
21 place. And when you file, there's some implications for that
22 receivership. And so, that's what the stay does. It says,
23 okay, whatever exists in state court -- because I think,
24 counsel, what you're painting this is, is it's some kind of
25 disciplinary hearing against the attorney as opposed to some

1 action involving the Debtor. This is a pending action
2 involving the Debtor in chancery court. And however you want
3 to characterize it, this involves what is going to happen to
4 that case.

5 And I think that once the bankruptcy is -- typically,
6 when it's filed and there's a receiver and the bankruptcy
7 filing is proper, receivership is terminated. It doesn't
8 matter what the state court says. It's done. I mean in
9 typical -- I don't know what the order says. I haven't seen
10 them.

11 But typically, that's what happens. That happens all
12 the time. There's a receiver. Debtor doesn't like the
13 receivership. Some secure creditor has got a receiver
14 appointed and they file. Then the Debtors go on with their
15 case and the receiver turns over all the assets and that's the
16 end of it. That doesn't mean a receiver can go in state court
17 and say I want a hearing or does the state court continue to
18 have -- can do anything with respect to the receivership
19 because there's a pending bankruptcy.

20 And so, what I hear you characterizing this is this
21 is some sort of disciplinary action against Mr. Dupre, I think
22 I'm saying his name correctly, as opposed to something
23 involving a matter before the Court involving the Debtor.

24 MR. CAPONI: No, Your Honor.

25 THE COURT: And ultimately, that hearing may happen.

1 I don't know. But the question is, can it happen today?

2 MR. CAPONI: Your Honor, to be abundantly clear, I am
3 not characterizing the hearing at all other than it is -- the
4 only thing I can read from the docket is the Vice Chancellor
5 wants to have counsel appear before him to provide him
6 information only. I don't see how that, in any way, violates
7 the automatic stay. There's no relief being sought. No
8 motions being sought. No one demanding sanctions. No one
9 indicating sanctions are coming. This is a Vice Chancellor
10 duly authorized asking to speak to the two Delaware lawyers
11 he's been dealing with to gather information.

12 What he does with that, I have no idea. He's not
13 graced us with his thought process. But I don't see how --

14 THE COURT: Well, that's the whole point, counsel.

15 MR. CAPONI: -- respectfully that we can enjoin the
16 Vice Chancellor from gathering information.

17 THE COURT: Well that's not the point. The point of
18 the matter is it may be premature. Because if I find that this
19 is a valid filing, what would his inquiry be as to why they
20 were involved? Why would he even want to ask that? Why would
21 he -- if I find, based on my review of the Chancellor's order
22 and my review -- whatever the true order is, that this is a
23 valid filing, what role would the Chancellor then have because
24 it would be terminated. So I'm not quite sure why he needs to
25 do anything today until its figured out whether this is valid

1 or not.

2 Now if I find this is invalid or not properly
3 authorized, then the Court would be in a position to haul
4 everybody in and say, I didn't authorize this. Bankruptcy
5 court and -- based on their review of my order, said it wasn't
6 authorized. Now tell me why were you involved and why did you
7 not comply with my order? So that's the concern I have is that
8 it may be premature to have that inquiry.

9 MR. CAPONI: Your Honor, I would answer it this way.
10 The two are not mutually exclusive. There is -- you know, I
11 don't know what the Vice Chancellor is thinking, but there is
12 no reading of the order that -- where one would conclude that
13 the order was not violated. That does not mean the bankruptcy
14 is not authorized. It doesn't mean Your Honor can't find that
15 the bankruptcy is authorized. But the Vice Chancellor could,
16 even if the bankruptcy is authorized, determine that an officer
17 of the court violated an order of the court and deal with that.
18 That as --

19 THE COURT: Well, we would all -- counsel --

20 MR. CAPONI: One is not mutually exclusive.

21 THE COURT: It is mutually exclusive, because if I
22 find it was authorized under his order, he can't find
23 otherwise, and he wouldn't be able to do anything with respect.
24 Because in order to find that they violated his order, the
25 first thing that has to happen, is this case has to be found to

1 be an unauthorized filing. He doesn't get to do anything yet.

2 MR. CAPONI: Your Honor --

3 THE COURT: He has to find that it was on counsel.
4 He would have to find that it was unauthorized, and that the
5 Delaware lawyer violated his order. Until this is found to be
6 an unauthorized filing, I think it's premature for the
7 Chancellor to be doing anything.

8 MR. CAPONI: Yes, Your Honor.

9 THE COURT: If it's authorized, how in the world is
10 he going to have anybody come and say you violated my order?

11 MR. CAPONI: Because, Your Honor --

12 THE COURT: Now I'm not saying, I am -- that would
13 mean that he would have a different interpretation than my
14 interpretation of his order. And I'm not saying that
15 ultimately this may be unauthorized. I'm just saying at this
16 point we don't know, so I don't know why there would be any
17 fact finding for anybody at this point. Because the first
18 thing that has to happen is to determine whether this was
19 authorized. And it's still a more broader issue, is if the
20 state stays everything, status conference, inquiries, anything.
21 And the stay is pretty broad if you ask me.

22 And even if a filing is determined to be
23 unauthorized, that doesn't the stay didn't go into effect. It
24 doesn't mean that. All it says is automatic with certain
25 exceptions. And so, that's where my focus is. Is this an

1 exception? And it seems to me what the inquiry is what was
2 your involvement and why did you do this? It doesn't even
3 matter whether he intends to sanction whatever. It doesn't
4 matter at this point because if it's an authorized filing, what
5 does it matter to the Chancellor, Vice Chancellor, what their
6 role was?

7 MR. CAPONI: Yes, Your Honor. I can answer that.

8 THE COURT: It doesn't matter to the Vice Chancellor.
9 It only matters to the Vice Chancellor if they violated his
10 order, and I don't know if they did or didn't. He doesn't get
11 to say that yet until I decide whether this was authorized or
12 not.

13 And again, I want to emphasize, I'm not finding one
14 way or the other. I don't have the order. I don't have
15 anything. This is just simply my trying to understand what the
16 scope of the automatic stay is and whether anything, anything
17 can go forward in litigation involving the Debtor.

18 Now, I mean, there are certain exceptions. But I
19 haven't heard where this one.

20 MR. CAPONI: Your Honor, if I --

21 THE COURT: And again -- yes?

22 MR. CAPONI: I'm sorry. Your position is clear, Your
23 Honor. I'll just take one last shot at this and then I'll
24 yield. There are two orders in place.

25 THE COURT: Okay.

1 MR. CAPONI: There is one that appoints the receiver
2 and spells out what the receiver does. There's separately a
3 status quo order which says no one can facilitate a bankruptcy.
4 So there's two separate orders. I believe, as I read the
5 docket entry, the Court is interested in the receivership
6 order, which says nothing about bankruptcy, and it indicates
7 that the receiver runs the company, he runs the Board of
8 Directors, et cetera. That order can be violated regardless of
9 the bankruptcy.

10 So if someone calls a board meeting, if someone
11 orders stationary, if someone does anything with Technovative
12 assets without running it by Mr. Liston, they will be in
13 violation of that order. It has nothing to do with bankruptcy
14 because there's nothing in that order about precluding a
15 bankruptcy. I understand the Vice Chancellor as being focused
16 only on the receivership order and whether actions were taken
17 that violate that order or what Mr. Dupre's role was in
18 respecting that order not related to the bankruptcy.

19 THE COURT: Well, it doesn't say that. It just says
20 I want to know what role was with counsel. I don't know what
21 his intentions are. And that's the whole point of the matter
22 is if in fact it's a proper filing, I don't know how he would
23 say that you didn't do -- you violated the receivership order.

24 Ultimately, the receivership -- the receiver either
25 violated the order or he didn't, okay. And I don't think that

1 we get to that yet. Because ultimately, the Vice Chancellor
2 would have to -- I'm not sure why he would need to know that at
3 this point until I make a determination based on my review.
4 And of course, I'm going to read what the judge said. I'm not
5 going to overrule his order. I'm not going to do anything
6 except look at it and say, you know, it's a straight forward
7 order. Again, I don't know if it is or isn't. I don't know
8 what that means.

9 Ultimately, it could be that, you know, it's no
10 different than if you have an order from the -- an
11 interpretation from the court, another court on an agreement.
12 Say the parties have a partnership agreement, whatever, that
13 says you can't file bankruptcy without the vote of whatever.
14 And some court has said, okay, this what this means, and this
15 is who has the authority. That's pretty easy for me. I look
16 at it and say, well, this court says this person has the
17 authority. This person didn't file. Bankruptcy dismissed. He
18 didn't have the authority. And then you have to go back to
19 the court that issued the order, and that court then gets to
20 say, I said you couldn't do this, and you did it anyway. Well,
21 there's consequences for that.

22 And so, that's why I'm saying at this point, your
23 position is, well, he told the receiver not to do something and
24 he has the authority to determine whether he did it or not. I
25 think it's premature. Ultimately, it may end up the same way.

1 I'm just saying, I'm not quite sure that that makes sense for
2 that to go forward until there's a determination that the
3 receiver did something that violated some order.

4 You know, I think it's a little premature. That's
5 all I'm saying. And I understand what you're saying. And I
6 understand what you're saying. I get if he said, listen, we're
7 going to have status conference to determine what the status of
8 this case is and what we're going to do with it now that
9 bankruptcy has been filed. There's nothing wrong with someone
10 going and saying, bankruptcy -- and this is a Vice Chancellor
11 in Delaware. We're not saying that this isn't some
12 sophisticated party who doesn't understand the automatic stay.
13 I would be remised in thinking that he isn't.

14 And so, that's why I'm saying I'm not quite sure, you
15 know, and I don't know. I can't call the Vice Chancellor and
16 say, well, what do you intend to do with this? My concern only
17 is, is when the stay is imposed, can anyone do anything
18 involving the -- that needs to wait is stayed. Doesn't mean
19 you can't get to it later. It just means you can't do it now.
20 And that's what I'm trying to figure out. Is it an absolute
21 bar to anything involving the Debtor?

22 And ultimately, what -- he wants to know what his
23 involvement was. We can't get around that. He wants to know;
24 did you authorize this? Did you participate in this? And if
25 he violated the court order, the Court gets to say that. But

1 that doesn't happen until I figure out whether this was
2 authorized or not. And so --

3 MR. ZAHRALDDIN: Your Honor.

4 THE COURT: -- there's no getting around that. Yes?

5 MR. ZAHRALDDIN: Your Honor, can I have one point of
6 clarification here? I have to say there's a second part of the
7 language here. And this is again Rafael Zahralddin for the
8 Debtor. The second prong of the language here in this order is
9 a question as to exactly that. How could Technovative file the
10 petition in light of the order and the status quo? That goes
11 to the heart of whether there's authority. And I agree with
12 you that's premature.

13 THE COURT: Of course you do.

14 MR. ZAHRALDDIN: And I have one other point just to
15 clarify things, and I'm sorry that we couldn't get more
16 information to you. Let me clarify and correct Mr. Caponi on
17 one thing. There was a bankruptcy for Stream that is not the
18 Debtor entity which is in front of you right now. We're
19 talking about Technovative. Technovative was not filed in the
20 first bankruptcy. I can't remember if they were filed in the
21 involuntary.

22 The reason that those two bankruptcies were dismissed
23 as bad faith filings is because there was a -- the Judge, Judge
24 Owens in that case decided that it was better for the case to
25 be completed in chancery court. There was a preliminary

1 injunction. She made a judgment call to dismiss the cases.
2 Have it adjudicated. Vice Chancellor Laster put in a permanent
3 injunction giving the assets to the secured creditors. That
4 was then appealed by Mr. Dupre. And in the unanimous five to
5 zero decision, the Court remanded it back with a directive to
6 strike the transfer of the assets and the private foreclosure a
7 invalid in violation of Delaware law on its face because they
8 didn't get the preferred shareholder's votes in order to do
9 that transaction and to return the assets.

10 So the only reason those were unauthorized bad faith
11 filings was because something needed to be done in chancery.
12 Now we're back a year later, and the assets still hadn't been
13 returned. And for a variety of other reasons, which we will
14 get in front of you when we have the right breathing spell, we
15 will explain why this bankruptcy was filed at this point.

16 Also, today was a pretrial conference originally at
17 3:00. I realize that the space was set up for that and it had
18 been there for a while. It has been changed now to focus on
19 this issue of the bankruptcy filing and that's what I meant
20 when I said we were surprised. I didn't -- I just wanted to
21 clarify those couple of things because I didn't want you to
22 think that this was -- you know, this is a serious law firm.
23 These are serious issues, and this is a serious company. We're
24 not lightly coming into bankruptcy court and asking for relief.

25 THE COURT: Well let me just say that if it was just

1 a simple pretrial, that would have been stayed. No one would
2 be saying it wasn't. It would be stayed. So the question is,
3 is because he added this on to the pretrial, does that now take
4 it out of the stay? And what I'm hearing from counsel is,
5 well, this is because he believes that the attorney or Mr.
6 Dupre, I'm assuming he's an attorney because he said it had to
7 do with the bar, the Delaware bar, violating a judge's order.

8 MR. DUPRE: I am an attorney.

9 THE COURT: I don't know -- I mean, at some point
10 does he have the authority to inquire whether somebody violated
11 his order? And I don't know. I mean, at the end of the day,
12 they could be right. This was prohibited. And then if it was,
13 you guys all go back to chancery court. And if it isn't,
14 it'll never go back there.

15 MR. ZAHRALDDIN: And, Your Honor, I have quotes from
16 Vice Chancellor Lamb as to why that would be impossible. We
17 have other cases on point. As you have mentioned, this is not
18 an uncommon issue. This was a receiver pendente lite.

19 And again, I don't think that's before you today.
20 The real issue is particularly, and not to discount the
21 pressure on Mr. Dupre because I think that that is enough as it
22 is to deny any -- or enforce the stay. But the second prong is
23 more concerning to me because it's an inquiry into matters that
24 should be in front of you and not the Vice Chancellor.

25 MR. DUPRE: Your Honor, may -- may I?

1 THE COURT: Who's this? Yes, who's this?

2 MR. DUPRE: Your Honor, may I speak? This is Mr.
3 Dupre. So I somehow became the star of the show of this
4 hearing to my chagrin. I only need to tell you, this is our
5 pretrial conference. It says it in the second sentence of this
6 order. So I was prepared before there was a bankruptcy to go
7 do the joint exhibit list and the questions of law to be tried
8 and all the other things that you do at a pretrial conference.
9 That's what I intended to do today. The Court just added this
10 on there. Unless you tell me otherwise within the next eight
11 minutes, I am supposed to go to a pretrial conference. It's
12 not cancelled. It's not modified. This thing is still going.

13 THE COURT: Well, and it's a pretrial conference
14 involving the Debtor, correct?

15 MR. DUPRE: Yes, Your Honor. That is correct, Your
16 Honor.

17 THE COURT: Then a pretrial conference involving the
18 Debtor is stayed. I don't care what the subject is. It's
19 stayed. This is about the upcoming trial. That trial --
20 anything in connection with that trial is stayed until we
21 figure out whether this is an authorized filing. Because what
22 I already am hearing is that the Debtor believes is authorized,
23 other parties believe it's not prohibited by the judge's order.
24 I don't need to determine that today. All I need to determine
25 is does the stay stop anything. And this is a -- the pretrial

1 conference is stayed.

2 I don't care what you're going to go talk about over
3 there. It is stayed because there is a valid filing in terms
4 of it was filed of record. I don't want anybody to use the
5 word valid as it was authorized and proper. Valid means a
6 petition -- let me back off. A petition was filed. The
7 lawyers, when the petition is filed, the automatic stay
8 automatically applies. It does not say it only applies in a
9 properly filed. It does not say that. And it's stayed until
10 either the case is dismissed, or relief is granted. But
11 nothing can happen involving these Debtors. Everything stays.
12 And the fact that he may have added on a different subject
13 matter in connection with the pretrial doesn't change that it's
14 a pretrial conference that is stayed.

15 I'm not quite sure what you guys want me to do. I
16 mean, this is just brain -- if you were involved in any
17 litigation, district court, federal court, wherever. That
18 litigation is stayed, when a -- when the stay goes into effect.
19 You either get the case dismissed, or you get the -- or you get
20 relief from the stay to go forward.

21 I have often said, okay, case is stayed, but I'm
22 going to send you guys back to state court to go litigate and
23 then come back here, and I'll figure out what I'm going to do
24 with it in bankruptcy, or from the very beginning, whether it's
25 an authorized filing or not, or it's a -- all of those things

1 are issues that have to be addressed, but they have no impact
2 on the automatic stay. the stay comes in unless it's like
3 some governmental, you know, there's some exceptions for
4 emergencies and all those other things. I don't see how that
5 happens. I don't see how the fact that the pretrial may
6 include some specific issue, transforming out of some continued
7 action in pending litigation.

8 So my understanding is this was what I heard from
9 debtor's counsel, and I think Mr. Dupre is that this was
10 scheduled. Whatever was scheduled for today is stayed. It
11 cannot go forward. I'm not quite sure why anybody wouldn't
12 know that. I don't know. I don't -- and I'm not hearing an
13 exception. And ultimately, if the Court believes that somebody
14 violated its order, then they could do a pre-trial -- I mean,
15 do a show cause hearing or something, but not in this case,
16 because the case that it's in is an action involving the
17 Debtor.

18 And to the extent that this is about some attorney
19 violating or a supervision of an attorney, then that needs to
20 be done separately and then somebody can come and tell me, why
21 or they grieve the stay? Although I don't know it would
22 be -- I'm not -- I'm not even going to offer any -- I'm not
23 even addressing that. That's if somebody thinks that, you
24 bring it to me. But for today's purpose, there's no way a
25 pretrial conference can go forward.

1 Unless somebody else wants to chime in and say
2 something and tell me how a pretrial conference goes forward, I
3 want to hear it, but we're pushing up on four minutes before
4 this is supposed to go forward. And presumably, let me back
5 off -- and Mr. Dupre wouldn't be the only one that would be
6 required to show up. Debtors would be required -- how would
7 debtors not show up in a matter involving them?

8 So this isn't just going to be a hearing where it's
9 just Mr. Dupre showing up. Debtors would have to show up. And
10 debtors are not required to show up. So how are you going to
11 go forward when the Debtors don't -- aren't even required to
12 show up? That's another issue. Debtors don't have to
13 participate in this. And I don't see how you have a pretrial
14 where the -- are the Debtors the plaintiffs? The defendants?
15 What are the in this action? I don't even know that.

16 MR. CAPONI: Defendant, Your Honor.

17 MR. ZAHRALDDIN: I'll let Mr. Dupre answer that, Your
18 Honor.

19 THE COURT: Mr. Dupre, the Debtors are what?

20 MR. DUPRE: The Debtors -- the Debtors were the
21 defendants, Your Honor, or are the defendants I guess in the
22 stay.

23 THE COURT: Well, how are you going to have a
24 pretrial conference when the defendants are in bankruptcy and
25 you can't proceed without them? I don't even see how this goes

1 forward. I mean, just common sense. So I don't even -- I'm
2 not quite sure what it is.

3 All actions involving the Debtor are stayed. That's
4 what the stay says. And I don't know how you get around it.
5 Again, if the vice chancellor wants to say he has some action
6 involving Mr. Dupre, and he does something separately, well,
7 that's all fine and well, but that's not what we have here. We
8 have a pretrial conference in a matter where the Debtors are
9 the defendants.

10 And in any case that is stayed, I don't know what's
11 different here. I haven't heard anything that's different.
12 Debtors aren't required to show -- they have the protection of
13 the automatic stay. So they don't have to show up, and I don't
14 know how you have a pretrial conference where the defendants
15 don't participate. Anybody can tell me otherwise?

16 Okay. The only thing I'm going to say is any matter
17 or pending actions involving the Debtor are stayed by the
18 automatic stay, which is what this automatic stay says. I
19 don't think -- I don't even know why you guys need me to tell
20 you that.

21 Counsel, did you submit an order? I mean, I'm pretty
22 sure that, as I said, I'm sure Vice Chancellor Laster is a very
23 sophisticated judge. And I'm not quite sure what -- you know,
24 as I said, no pretrial conference is going forward. Nothing
25 involving the Debtor and the Debtors don't even have to show up

1 because they're protected by the stay. And I don't know how
2 you have an action where the Debtor -- the Debtor defendants,
3 who are not required to show up gets to go forward.

4 Now, is that -- listen, I can't see -- I can't
5 tell -- I mean, I can only say it's stayed, and it's
6 been -- nothing can go forward in a matter pending before
7 involving the Debtor. Now, what that judge wants to do with
8 it, I can't -- you know, I can't force him. But I don't see
9 how he can penalize the Debtors for not showing up or for
10 saying that they -- that anybody who is involved in this
11 litigation is required to show up when the defendants aren't.
12 I mean, it's stayed. So is there an order or something that
13 somebody wanted for me to sign? Is there --

14 MR. CAPONI: Yes, Your Honor. We can submit a very
15 simple order that grants the enforcement of the stay, and I
16 will submit it in the next 10 or 15 minutes.

17 THE COURT: Okay. And that's in the -- no wonder I
18 couldn't find it. I'm in the wrong case. I put --

19 MR. CAPONI: Yes. It's in the Technovative case,
20 Your Honor.

21 THE COURT: 23-10764. I had 762. 23-10764. Okay.
22 And counsel, I don't want anyone to think that this is some
23 determination. I'll repeat myself. That whether this was a
24 properly or authorized filing. I'm not making any such
25 finding. I'm only limiting to that the stay precludes any

1 action from going forward. That is it. All right. I see you
2 proposed --

3 MR. CAPONI: Yes, Your Honor.

4 THE COURT: Let's see. Order granting and let's see
5 what it says. Okay. Oh, no. That's the order granting the
6 emergency hearing. Motion filed.

7 Did you submit an order counsel? I don't see one.

8 MR. CAPONI: We haven't submitted one yet, Your
9 Honor, because we simply submitted the ones to get the
10 emergency hearing first.

11 THE COURT: All right. Counsel, next time --

12 MR. CAPONI: I can get you one --

13 THE COURT: Right. When you do the emergency
14 hearing, you next time include both the hearings, the order
15 authorizing the motion and an order that would address the
16 actually underlying motion. So all I can do is, it's 3:00. I
17 don't know what to tell you except I'm saying it's stayed. No
18 pretrial conference can go forward. And if Judge Laster --
19 vice Chancellor Laster thinks there's something different that
20 does not involve the Debtors, he's free to do anything he
21 wants. That's all I'm saying. Okay.

22 MR. CAPONI: Your Honor. Thank you. This is Steve
23 Caponi again. Thank you for your guidance. My assistant
24 called chambers, and let him know that Your Honor's decision
25 here today, but I'd be remissive while we have you on the phone

1 if I could just address one other issue briefly, which is, you
2 know, the matters that are contested whether this is a, you
3 know, another fraudulent filing or not, or it's a big issue,
4 relief from the stay, which we'll be most likely filing
5 tomorrow to let the trial go forward. We'll get in front of
6 you.

7 A bigger issue, Your Honor, is for the last I want to
8 say six months or so during Mr. Liston's tenure as the
9 receiver, this entity has only been functioning through a funds
10 from the secured creditors and there's not going to be any
11 assets left. They were talking to the tune of I think in
12 excess of a million dollars a month. And I think we're going
13 to like to see how quickly we can get in front of Your Honor on
14 both whether this was an authorized filing and also relief from
15 the stay. And Your Honor may not have any guidance to provide,
16 but any that you do I would appreciate.

17 THE COURT: Well, the other issue, counsel, is you're
18 saying, you know, is this your cash collateral. They can't use
19 it without your consent. So that's another issue that the
20 Debtor would have that while this is pending, and they want to
21 use your asset. And counsel, I have until 3:00 for this, only
22 because I have an obligation that I have to run off for.

23 MR. CAPONI: I appreciate your help today, Your
24 Honor. And we will address those issues --

25 THE COURT: Well, counsel, I'm just

1 saying -- counsel, you can keep talking, I just want to tell
2 you --

3 MR. CAPONI: Okay.

4 THE COURT: -- that I will have to switch you to my
5 car phone. So I will --

6 MR. CAPONI: Okay.

7 THE COURT: -- listen. I just want everybody to know
8 if you hear that -- and you know, I have a 3:00 obligation
9 every day.

10 MR. CAPONI: Okay.

11 THE COURT: I am for the record if anybody -- if we
12 have anything from 3 to 4, I usually have to leave. I now have
13 the pleasure of raising my well now 13-year-old grandson, and
14 I'm back to the parent mode. So I get a child from school
15 every day, but I can talk.

16 So with respect to a hearing on a expedited basis, as
17 to getting relief from the stay to continue -- and counsel,
18 again, I have often when the issues are in state court, and/or
19 issues that the state court is familiar with, I often defer to
20 the state courts to address the underlying issues. And then
21 when those issues are decided to the extent they impact or then
22 be addressed through bankruptcy, that happens also.

23 So even if I found this was a valid filing -- which I
24 don't know if I will or will not -- that does not mean that
25 relief could not be granted to continue. Because if those are

1 underlying issues that ultimately would have to be decided to
2 this -- by this Court, I don't try to rewrite the litigation.
3 It's a waste of judicial resources. And more importantly, I
4 just heard two courts who are much more familiar, and have the
5 expertise in a specific area.

6 Counsel, I'm going to have to put you on hold a
7 minute.

8 MR. CAPONI: Certainly, Your Honor.

9 THE COURT: Counsel, I'm back. I apologize. So --

10 MS. FAY: Your Honor.

11 THE COURT: -- counsel. Yes.

12 MS. FAY: This Erin Fay on behalf of the receiver.

13 And I apologize for being out of order here. But I've been
14 patiently waiting and there's been no downtime to speak up.

15 THE COURT: That's fine.

16 MS. FAY: So I just wanted to note a couple of
17 things. First, the receiver is keenly interested in following
18 all orders and applicable law of this Court and the chancery
19 court, whatever is applicable. That's our goal is to figure it
20 out as quickly as possible. But I would also be remiss to note
21 that Mr. Liston has been running this company for five months
22 now. And that includes running real foreign operating
23 companies.

24 And so we're going to need to work together with the
25 Debtor to figure out how this can continue to work in the

1 transition period so that all value is maximized and all assets
2 are preserved. The receivership order here goes beyond maybe
3 just operating assets and gives Mr. Liston all powers of the
4 board. You know, we need to figure out how that all works
5 together.

6 THE COURT: What about --

7 MS. FAY: So that we can --

8 UNIDENTIFIED SPEAKER: The --

9 THE COURT: What are you talking about? What carpet?
10 I'm sorry, counsel. I didn't realize I wasn't on mute.

11 MS. FAY: No problem, Your Honor. We're not asking
12 for an advisory opinion today, but I just wanted to note that
13 these are real operating companies. And if we can't agree on
14 the answer and the process, we may be back before Your Honor
15 very, very shortly. So we'll put that in the potential need
16 for an emergency hearing. Hopefully not.

17 I would also note that while we are -- while we've
18 been on the phone, the vice chancellor has entered a docket
19 entry that notes the pretrial conference is canceled, so it may
20 well be that the release is mooted for purposes of today.

21 THE COURT: As I said, I would be remiss if I did not
22 assume -- oh, no. Hold on.

23 All right, counsel. So it was cancelled. Before as
24 I said, I assume that the vice chancellor is very familiar with
25 bankruptcy, the implications and that this hearing may have

1 been whatever. In terms of the receivership, I mean,
2 typically, typically, the -- I mean, the code says what
3 happens, although there is some provisions if I recall,
4 correctly, that apply or relate to what happens to
5 receiverships when a bankruptcy is filed.

6 So I'm not quite sure, given the concern about, I
7 heard you say either international is involved. International
8 services and various issues that need to be addressed quickly.
9 Obviously, I will try to schedule if the parties ask for an
10 emergency hearing.

11 The issue may be is that I will be unavailable
12 from -- I think I have the -- we have a annual bankruptcy
13 conference on the 27th through the 29th. And I will be away
14 from the 2nd through the 11th. So that doesn't give us, you
15 know, within at least the next two weeks, a lot of available
16 time.

17 If that answers your question as to how quickly we
18 could get to a stay relief hearing, a concern for the receiver,
19 a properly authorized filing, all of those things, which I
20 anticipate would require -- you know, I'm not sure how lengthy,
21 but some time for an evidentiary record to be made.

22 MR. ZAHRALDDIN: Yes, Your Honor. And I also
23 appreciate if we would maybe also think about any sort of
24 relief that the Debtor actually wants, as opposed to the people
25 who want to throw us out of bankruptcy. Because we have issues

1 and we'll work cooperatively with the receiver.

2 And we're not going to be using the cash collateral
3 of the lenders, because those were investments. They were
4 secured in their convertible notes, which is another issue.
5 That's the purpose of some of the things that we're talking
6 about today.

7 But just please keep an open mind, Your Honor,
8 because once we have a second to breathe, and we're not
9 fighting to stay in the bankruptcy, we're going to be filing
10 some motions. And I appreciate you letting us know your
11 availability. But we'll work with the receiver to make sure we
12 don't -- we of course, are the most worried about these assets
13 and what's happening overseas. And we'll present to Your Honor
14 evidence as to why we think the bankruptcy is a better place
15 for all that to get sorted out.

16 THE COURT: Well, that's fine, counsel, but what I
17 was, I guess I'm hearing from -- I'm going to call them secured
18 creditors because that's just what I'm going to call them. I
19 don't want anybody --

20 MR. ZAHRALDDIN: Sure.

21 THE COURT: -- to say that I'm finding that they are,
22 but they're the parties who has an interest in the cash from
23 what I'm gathering. They have an interest in the cash. And as
24 a result, they're concerned about what happens to their cash,
25 that they would need --

1 MR. ZAHRALDDIN: There's no cash, Your Honor.

2 THE COURT: -- some --

3 MR. ZAHRALDDIN: There's no cash, Your Honor.

4 THE COURT: Well, assets.

5 MR. ZAHRALDDIN: The assets. Yes.

6 THE COURT: Well, he's saying that they're using
7 them?

8 MR. ZAHRALDDIN: Yeah.

9 THE COURT: Well, a million dollars in assets.

10 MR. ZAHRALDDIN: It's intellectual property, Your
11 Honor. Yeah.

12 THE COURT: Okay. Well, how is --

13 MR. CAPONI: Your Honor.

14 THE COURT: -- it being dissipated? Yeah. Okay.

15 MR. CAPONI: Real briefly, Your Honor. Steve Caponi
16 just so the record is clear. The assets. There is no cash.
17 They're hard assets. It's IP. This is a pre-production
18 company, pre-revenue. There are many employees as well. I
19 mean, there is a -- there the -- everything is done through an
20 operating subsidiary overseas. And once those employees start
21 to question whether they're going to get paid or anything else,
22 everything evaporates. So this is a very, very delicate
23 situation to say the least. Very critical.

24 THE COURT: Well, counsel, when you said that your
25 clients were losing a million dollars in assets a month or

1 something to that effect, I guess I assumed when you said a
2 million dollars in assets being used a month that that was
3 cash. What assets of a million dollars are being used that is
4 be dissipated, reduced, whatever words you want to use?

5 MR. CAPONI: Yes, Your Honor. I'm sorry. Maybe I
6 was not precise in my language. The company operating needs
7 are approximately a million dollars a month. My client has
8 been funding that million dollars a month through Mr. Liston as
9 the receiver. If my client ceases to fund the million dollars
10 a month because this is a pre-revenue company, everything shuts
11 down immediately.

12 The companies are already -- and Mr. Liston is more
13 qualified to speak to this than am I. But we've had several
14 situations where because again, this is overseas, they're very
15 regimented. Tax payments needed to be made, and this entity
16 has been threatened to be shut down numerous times. So if
17 the -- this were to drag out, we're not talking about, you
18 know, fighting over a car that's going to have inherent value.
19 The minute the weekly checks don't come from my client,
20 everything evaporates. That's what I was referring to.

21 THE COURT: Okay.

22 MR. ZAHRALDDIN: And Your Honor, the reason that the
23 money's coming over is because the -- remember the assets were
24 supposed to come back to my client. And so the -- while this
25 dispute is growing over this last year, which is we believe in

1 contravention of the clear direction from the Delaware Supreme
2 Court, the assets needed to be maintained. So we had to put up
3 a bond, I believe Mr. Dupre can clarify that and the ask from
4 the secured creditors was to help to maintain the assets. So
5 that's a directive to preserve the assets. It's not a use of
6 their cash collateral.

7 THE COURT: Okay. All right. So that's -- so I
8 guess I should, I violated my own rule of assuming, but I heard
9 a million dollars being used every month, and cash being
10 involved, that was the assumption. So it was a wrong
11 assumption on my part. So what --

12 MR. ZAHRALDDIN: It's just very early, Your Honor.
13 That's why. It's very early in all this. We want to give
14 our -- we want to get an opportunity to get you all the facts.
15 And I'm sure the other side does, too. That's kind of where we
16 are now. So apologies for that.

17 THE COURT: Okay. Well, what I would suggest the
18 parties do is get together and try to come up with a time line.
19 Get some dates from my courtroom deputy, Ms. Godfrey from dates
20 that would work. And I guess we're looking at next week and
21 the week after for being able to have hearings, and whether you
22 guys can get that done in that time period so that you can make
23 a proper evidentiary record. I don't know.

24 MR. ZAHRALDDIN: I don't think we can, Your Honor.
25 But --

1 MR. CAPONI: We absolutely will, Your Honor. No
2 surprise to --

3 MR. ZAHRALDDIN: I don't think the Debtor should be
4 forced to try to force that in there. I don't think with the
5 seriousness we have here that we can get depositions in and
6 discovery and all that that we'd have to do to defend whatever
7 is going to be sent to us. There's no emergency here. There's
8 no-- we can -- we'll show you that there's no need for that
9 type of -- we want to move things along, but we don't want to
10 be forced to be restricted from our breathing spell, which is
11 what the automatic stay is supposed to grant us.

12 MR. CAPONI: Your Honor, we appreciate your guidance.
13 This is Mr. Caponi again. We'll have a motion on file for
14 relief from stay tomorrow. We anticipated that this was likely
15 to happen given the past conduct, and we'll demonstrate with
16 seriousness why actions need to happen more promptly and Your
17 Honor will make the decision ultimately, and we appreciate your
18 time.

19 THE COURT: And counsel, if you need expedited
20 relief, please reach out to my courtroom deputy. You know my
21 schedule. I've already said, you know, after the next two
22 weeks -- after next week, and the following week starting on
23 the 27th, I'm pretty much going to be unavailable until the --

24 I'm back on the 12th right, Eileen?

25 THE CLERK: Yes, Judge. You are.

1 THE COURT: All right. Counsel, I'm going to hang up
2 because right now I don't think you want to hear a bunch of
3 screaming kids. Thank you.

4 MR. CAPONI: Thank you, Your Honor. Bye-bye.

5 THE COURT: Bye-bye.

6 (Proceedings adjourned at 3:15 p.m.)
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14 C E R T I F I C A T E
15

16 I hereby certify that the foregoing is a true and
17 correct transcript from the electronic sound recording of the
18 proceedings in the above-entitled matter.
19
20
21

22 /s/
23 John Buckley, CET-623
24 Digital Court Proofreader
25